

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PA

FILE: A90-654-069

IN THE MATTER OF:

AURELUS, JACQUES DIMANCHE

RESPONDENT

IN REMOVAL PROCEEDINGS

Pro se

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Immigration and Naturalization Service and the respondent, it is hereby

_____ ORDERED that the request for a change in custody status be denied.

_____ ORDERED that the request be granted and that respondent be:

_____ released from custody on his own recognizance

_____ released from custody under bond of \$ 15,000

_____ OTHER _____

Copy of this decision has been served on the respondent and the Service.

APPEAL: waived ~~reserved~~

YORK -- YORK COUNTY PRISON

Date:

Walter A. Dorling
WALTER A. DORLING
Immigration Judge

XS

4-4-02

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PENNSYLVANIA

IN THE MATTER OF Jacques Dimanche AURELUS
A # 90-654-069
DATE OF REDETERMINATION 4/4/02
DECISION \$15,000 bond

On Behalf of Respondent

On Behalf of Service

Pro Se

BOND REDETERMINATION MEMORANDUM

In a recent decision by the United States Court of Appeals for the Third Circuit in Patel v. Zemski, 275 F.3d 299 (3rd Cir.), the court found that the mandatory custody rules set forth in section 236(c) of the Immigration and Naturalization Act were unconstitutional to the extent that aliens, and particularly lawful permanent residents, are not permitted to establish that they are not a flight risk or danger to the community. That is, even those aliens with a criminal record are entitled to a substantive bond hearing. Thus, all Board decisions relating to the mandatory custody provisions of section 236(c) have been effectively overruled by the Third Circuit.

I have duly considered the standard of review as set forth in Matter of Andrade, 19 I&N Dec. 488 (BIA 1987). In so doing, I have taken particular note of the Third Circuit's observation in Patel that "government detention violates substantive due process unless it is ordered in...special and narrow non-punitive circumstances...where a special justification...outweighs the individual's constitutionally protected interest in avoiding physical restraint," citing Zadvydas v. Davis, 121 S.Ct. 2491 at 2499 (2001).

1. General Information

Nativity Haiti
Citizenship Haiti
Age 48
Lawful permanent resident? Yes since 1989
Other lawful entry? _____

2. Factors indicating dangerousness

☒ a. Criminal conviction☒ i. Referenced in Order to Show Cause or Notice to Appear

a. Sentence _____

b. Time served _____

c. Comments _____

- used false passport claiming to be USC
 - vio. of probation pending

☐ ii. Other (Specify) _____

- 6 simple assaults in NJ - no discrepancy
 of them
 - 12-98 ag. assault - 3 yrs probation

☐ b. Nature of offense indicates propensity for violence☐ c. Restraining order☐ d. Other (Specify) _____

3. Factors relevant to risk of flight from further proceedings:

☒ a. Family ties to United States citizens

____ Father ____ Mother ____ Spouse 4 Children ____ Siblings ____ Grandparents

____ Aunts, Uncles, Cousins ____ Other (Specify) _____

Comments: _____

☐ b. Family ties to Legal Permanent Residents

____ Father ____ Mother ____ Spouse ____ Children ____ Siblings ____ Grandparents

____ Aunts, Uncles, Cousins ____ Other (Specify) _____

Comments: _____

☒ c. Employment history

Occupation (primary) taxi dispatcher / welder (secondary) stock person

Current employer _____

Approximate length of time with current employer _____

Previous employer _____

☐ d. Past immigration violations

____ Came into the United States without inspection or admission

____ Visa overstay

____ Previously excluded, deported, or removed

____ Other (Specify) _____

☐ e. Prior record at criminal or immigration proceedings

____ Criminal proceedings

____ Bench warrant(s) issued

____ Contempt citations

____ Probation or parole violations

____ Other (Specify) _____

- ☐ Immigration proceedings
 ☐ In absentia order
 ☐ Failure to depart after ordered deported or removed
 ☐ Other (Specify) _____
- ☐ f. Nature of criminal and/or immigration violations demonstrates
 ☐ Deceitful character
 ☐ Lack of respect for authority
 ☐ Other (Specify) _____
- ☐ g. Already under supervision of state or federal authority
 ☐ Probation
 ☐ Parole
 ☐ Other (Specify) _____
- ☒ h. Apparent eligibility for relief from removal
 ☒ Cancellation of removal or suspension of deportation
 ☐ Adjustment of status
 ☐ Asylum, Withholding of Removal, or Convention against Torture
 ☐ None
 ☐ Other (Specify) _____

4. Additional Comments

- has 10 children (some in US, some in Haiti)

* E42A granted by IS - In adjudication - 3-8-02

☐ Accordingly, based on the above noted factors, the Court finds that the Respondent presents a threat to the community or a significant flight risk and should be **detained** in the custody of the Immigration and Naturalization Service **without bond**.

☒ Accordingly, based on the above noted factors, the Court finds that the Respondent presents a risk of flight and that a bond in the amount of \$15,000 is necessary to ensure the Respondent's presence at further immigration proceedings.


Immigration Judge

6-25-02
Date